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14 Counterclaim Plaintiff Radiancy, Inc.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 TRIA BEAUTY, INC.,
Plaintiff,
19 vs.
20 RADIANCY, INC.,
Defendant.
21

CASE NO. CV-10-5030 (RS) (NJV)

**SUPPLEMENTAL DECLARATION OF
BRENDAN J. O'ROURKE IN SUPPORT OF
RADIANCY, INC.'S MOTION TO CONTINUE
TRIAL AND PRE-TRIAL DEADLINES**

22 RADIANCY, INC.,
Counterclaim Plaintiff,
23 vs.
24 TRIA BEAUTY, INC.,
Counterclaim Defendant,
25 and
26 KIMBERLY KARDASHIAN,
Counterclaim Defendant.
27
28

Honorable Judge Richard Seeborg

1 I, Brendan J. O'Rourke, declare as follows:

2 1. I respectfully submit this supplemental declaration in support of Radiancy's
3 Motion to Continue the Trial Date and Pre-Trial Deadlines. *See* Dks. 183, 184.

4 2. I am an attorney licensed to practice law in the State of New York and am
5 admitted *pro hac vice* in the above-captioned matter. I am a member of Proskauer Rose, LLP,
6 attorneys for Defendant-Counterclaimant Radiancy, Inc. ("Radiancy"). The facts set forth herein
7 are of my own personal knowledge and, if called to testify under oath, I could and would testify
8 competently thereto.

9 3. Under the current case schedule, on Friday, June 15, 2012, the parties were
10 required to exchange exhibit lists. TRIA Beauty, Inc. ("TRIA") provided an exhibit list
11 containing 966 exhibits at approximately 10:00 p.m. By contrast, Radiancy submitted an exhibit
12 list with 287 exhibits. The fact that TRIA's list contained approximately one thousand (1,000)
13 exhibits strongly suggests to me as lead counsel that TRIA is unprepared to move forward as
14 currently scheduled. Clearly, there is no way one party will be able to (or would be permitted to)
15 introduce anywhere close to one thousand (1,000) exhibits in the span of a seven-to-ten (7-10)
16 day trial.

17 4. Under the current case schedule, Radiancy is required to provide objections to the
18 exhibits on June 25. This illustrates that TRIA cannot in good faith meet the current schedule.

19 5. In an attempt to alleviate potential prejudice to Radiancy of having to review and
20 create objections to nearly one thousand (1,000) exhibits, early on the morning of Saturday, June
21 16, 2012, I requested TRIA's counsel provide Radiancy with a revised exhibit list by Monday,
22 June 18, 2012. Instead of providing this list as requested, on Monday, June 18, 2012, TRIA's
23 counsel wrote that they expected to have a shortened list on Tuesday, June 19, 2012. For TRIA
24 to cut its list close to the extent of Radiancy's list requires TRIA to remove about 70% of its
25 exhibits.

26 6. It is an honor and privilege to be permitted to appear in this Court *pro hac vice*,
27 and I am very grateful to have this privilege. Radiancy's counsel takes our professional
28 obligations seriously, and makes this motion for a continuance of trial dates and pre-trial

1 deadlines because we must do so to avoid prejudicing our client. We apologize to the Court for
2 needing a continuance and for submitting this supplemental declaration.

3 I declare under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct.

5 Executed on June 18, 2012 at New York, New York.

6 /s/ Brendan J. O'Rourke

7 Brendan J. O'Rourke
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